

Barry W. Davidson
Bruce K. Medeiros
Robert S. Delaney
DAVIDSON ♦ MEDEIROS
1280 Bank of America Center
601 West Riverside Avenue
Spokane, Washington 99201
(509) 624-4600

Attorneys for Metropolitan Mortgage
& Securities Co., Inc. and the
Metropolitan Creditors' Trust

Douglas B. Marks
Ford Elsaesser
Bruce A. Anderson
ELSAESSER, JARZABEK, ANDERSON,
MARKS, ELLIOTT & McHUGH, CHTD.
Lake Plaza Building
P.O. Box 1049
Sandpoint, Idaho 83864
(208) 263-8517

Counsel for Summit Securities, Inc.
and the Summit Creditors' Trust

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In re. . .

**METROPOLITAN MORTGAGE &
SECURITIES CO., INC.,**

Debtor.

In re. . .

SUMMIT SECURITIES, INC.,

Debtor.

Jointly Administered Under:
No. **04-00757-W11**
Chapter **11**

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE:
SUPPLEMENTAL ORDER
AUTHORIZING SALE OF LOTTERY
RECEIVABLES**

THIS MATTER having come on regularly for hearing upon the Motion for Supplemental Order Authorizing Sale of Lottery Receivables filed October 13, 2006 [Docket No. 12642] (the "Motion for Supplemental Order"), filed by the Metropolitan Creditors' Trust ("Metropolitan") as successor in interest to Metropolitan Mortgage & Securities Co., Inc., and the Summit Creditors' Trust ("Summit") as successor in interest to Summit Securities, Inc., by and through their counsel, pursuant to the Third Amended Joint Plan of Reorganization of

1 Metropolitan Mortgage & Securities Co., Inc. and Summit Securities, Inc. (the
2 “Debtors,” or the “Sellers”) confirmed by the Court on February 13, 2006 (the
3 “Plan”), for a supplemental order authorizing and approving the Debtors’ sale of
4 interests in certain lottery receivables and related assets (the “Receivables”) to
5 Stone Street Capital, Inc., its successors and assigns (“Stone Street” or the
6 “Purchaser”), and in connection therewith, the issuance of Supplemental Court
7 Orders (as defined in the Motion For Order Authorizing Sale Of Lottery
8 Receivables And Approving Lottery Receivables Purchase And Sale Agreement (the
9 “Initial Motion”), filed herein on December 8, 2005 [*Docket No. 9185*]), pursuant to
10 the Order Authorizing Sale Of Lottery Receivables And Approving Lottery
11 Receivables Purchase And Sale Agreement (the “Sale Order”) entered herein on
12 entered herein on February 23, 2006 [*Docket No. 10543*], authorizing and
13 approving the sale by the Debtors of certain portfolios of receivables and related
14 assets in accordance with the Lottery Receivables Purchase And Sale Agreement
15 dated November 17, 2005 (the “Agreement”) entitling the Sellers to certain
16 payments as set forth herein to the Purchaser; and the Court making the findings
17 of fact and conclusions of law set forth hereafter pursuant to Bankruptcy Rule
18 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014,
19 with such findings of fact to be construed as conclusions of law and conclusions
20 of law to be construed as findings of fact when appropriate, and all capitalized
21
22
23
24
25

1 terms not otherwise defined herein having the meaning given such terms in the
2 Agreement or the Motion for Supplemental Order, as the case may be;

3 NOW THEREFORE, the Court making the following Findings of Fact:
4

5 1. On February 4, 2004 (the "Petition Date"), the Debtors filed their
6 respective petitions for relief pursuant to chapter 11 of the Bankruptcy Code in
7 the judicial district within which their principal place of business has been
8 located for the one hundred and eighty days immediately preceding the filing of
9 such petitions.
10

11 2. The Bankruptcy Court entered an order dated February 13, 2006,
12 confirming the Plan.

13 3. Pursuant to the Plan, the Receivables owned by Metropolitan or
14 Summit were transferred to the Metropolitan Creditors' Trust or the Summit
15 Creditors' Trust, respectively.
16

17 4. The Motion for Supplemental Order concerns the sale of property
18 other than property resulting from claims brought by the estate against persons
19 who have not filed claims against the estate, within the meaning of 28 U.S.C. §
20 157 (b)(2)(B)(n).
21

22 5. The Debtors transmitted notice of the Motion for Supplemental
23 Order, the proposed Supplemental Order, and all transactions contemplated
24 thereby, to all persons and entities set forth by the Standing Order, and as
25

1 required by the Agreement, including the appropriate lottery commission of each
2 state affected by the proposed Supplemental Order.

3
4 6. A reasonable opportunity to object and be heard with respect to the
5 Motion for Supplemental Order and the relief requested therein has been afforded
6 to all persons and entities set forth by the Standing Order, and as required by the
7 Agreement, including the appropriate lottery commission of each state affected by
8 the proposed Supplemental Order.

9
10 7. The Debtors entered into contracts with the individuals identified in
11 the Motion for Supplemental Order (the "Payees"), in which Payees agreed to
12 assign, and Debtors agreed to purchase, the payments identified therein.

13
14 8. The Debtors seek to assign the Receivables with the Payees to the
15 Purchaser as set forth in the Motion for Supplemental Order.

16
17 9. As set forth in the Declaration of Patricia LaBorde filed herein in
18 support of the Motion for Supplemental Order, the transfer of the Victor Mackey
19 Receivable from Western United Life Insurance Company ("WULA") to the Debtors'
20 predecessor(s) in interest, the Debtors, and/or Summit, adequately satisfied the
21 requirements of C.R.S.A. §24-35-212. The Supplemental Order will constitute a
22 valid and appropriate judicial order under C.R.S.A. §24-35-212 approving said
23 transfer of the Victor Mackey Receivable from WULA to the Debtors'
24 predecessor(s) in interest, the Debtors, and/or Summit.
25

1 10. As set forth in the Declaration of Patricia LaBorde filed herein in
2 support of the Motion for Supplemental Order, the transfer of the James Lee
3 Snyder Receivable from WULA to the Debtors' predecessor(s) in interest, the
4 Debtors, and/or Summit was a valid transfer and assignment. The Supplemental
5 Order will constitute a valid and appropriate judicial order under RCWA
6 67.70.100(1) approving said transfer of the James Lee Snyder Receivable from
7 WULA to the Debtors' predecessor(s) in interest, the Debtors, and/or Summit.
8

9 11. As set forth in the Declaration of Patricia LaBorde filed herein in
10 support of the Motion for Supplemental Order, the Supplemental Order
11 authorizing the transfer of the Pamela Seagrave Receivable and the William
12 Provost Receivable will constitute a valid and appropriate judicial order under
13 M.G.L.A. 10 §28(2).
14

15 12. As set forth in the Declaration of Patricia LaBorde filed herein in
16 support of the Motion for Supplemental Order, the transfer of the Michael
17 Fluellen Receivable from WULA to the Debtors' predecessor(s) in interest, the
18 Debtors, and/or Summit was valid and enforceable and made for good and
19 valuable consideration and the transfer of the Michael Fluellen Receivable from
20 Debtors' predecessor(s) in interest to Summit was made for good and valuable
21 consideration. The Supplemental Order will constitute a valid and appropriate
22 judicial order under V.T.C.A., Government Code §466.406 in regard to said
23 transfer.
24
25

1 13. As set forth in the Declaration of Patricia LaBorde filed herein in
2 support of the Motion for Supplemental Order, the transfer of the Ronald
3 Swinderman Receivable from WULA to the Debtors' predecessor(s) in interest, the
4 Debtors, and/or Summit was valid and enforceable and made for good and
5 valuable consideration. The Supplemental Order will constitute a valid and
6 appropriate judicial order under V.T.C.A., Government Code §466.406 in regard
7 to said transfer.
8

9 14. As set forth in the Declaration of Patricia LaBorde filed herein in
10 support of the Motion for Supplemental Order, the transfer of the Robert Lukas
11 Receivable from WULA to the Debtors' predecessor(s) in interest, the Debtors,
12 and/or Summit was valid and enforceable and made for good and valuable
13 consideration. The Supplemental Order will constitute a valid and appropriate
14 judicial order under F.S.A. §24.1153 in regard to said transfer.
15

16 15. As set forth in the Declaration of Patricia LaBorde filed herein in
17 support of the Motion for Supplemental Order, the transfer of the Claudia Rae
18 Hayes Receivable from WULA to the Debtors' predecessor(s) in interest, the
19 Debtors, and/or Summit was valid and enforceable and made for good and
20 valuable consideration. The Supplemental Order will constitute a valid and
21 appropriate judicial order under V.T.C.A., Government Code §466.406 in regard
22 to said transfer.
23
24
25

1 16. The Supplemental Order will be binding on each lottery commission,
2 trustee or Annuity Issuer that received notice of the Motion for Supplemental
3 Order, and all parties affected by the proposed Supplemental Order, any and all
4 successors of (a) the Payees, (b) other interested parties, (c) the Purchaser, and
5 (d) the Assignee.
6

7 17. The Supplemental Order will in no way modify or negate the
8 ownership or control of any annuity contract or other asset owned by a Payor as
9 a means of funding a lottery prize associated with any of the aforementioned
10 Receivables nor shall it modify or negate a Trustee's obligations under any
11 applicable Trust Agreement associated in any manner with any of the
12 Receivables. The lack of opposition by a Payor and its respective compliance
13 with the Supplemental Order will not constitute evidence in this or any other
14 matter that the Payor has waived any rights in connection with any other
15 litigation or claims or rights other than the rights to the Assigned Payments as
16 identified in Exhibit A to the Initial Motion and as described herein.
17
18

19 18. This Court will retain jurisdiction to interpret and enforce the
20 provisions of the Supplemental Order in all respects, including, without
21 limitation, retaining exclusive jurisdiction to determine or resolve any and all
22 objections to or disputes among the parties with respect to the matters set forth
23 herein, provided however that, in the event the Court abstains from exercising,
24 or declines to exercise, jurisdiction with respect to any matter referred to in this
25

1 paragraph or is without jurisdiction, such abstention, refusal, or lack of
2 jurisdiction shall have no effect upon and shall not control, prohibit, or limit the
3 exercise of jurisdiction of any other court having competent jurisdiction with
4 respect to any such matter.
5

6 19. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and
7 6006(d), the Supplemental Order will not be stayed for ten (10) days after entry
8 thereof, but shall be effective and enforceable immediately upon issuance thereof.
9 Time is of the essence in closing the transactions referenced herein and the
10 Sellers and the Purchaser intend to close such transactions as soon as
11 practicable. Therefore, any party objecting to the Supplemental Order must
12 exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal
13 being foreclosed as moot.
14
15

16 20. Findings of Fact and Conclusions of Law re: Supplemental Order
17 Authorizing Sale of Lottery Receivables should be entered as set forth herein.

18 21. The Supplemental Order should be entered in the form attached to
19 the Motion for Supplemental Order as Exhibit B.
20

21 WHEREFORE, having entered the foregoing Findings of Fact, the Court
22 hereby makes the Conclusions of Law set forth hereafter. To the extent any of the
23 following Conclusions of Law constitute Findings of Fact, they are adopted as
24 such.
25

1 1. All of the Bankruptcy Code and any other applicable law relating to
2 the sale of the Receivables have been satisfied.

3 2. This Court has jurisdiction over the Motion for Supplemental Order
4 under 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding under 28
5 U.S.C. § 157(b)(2)(A). Venue of these cases and the Motion for Supplemental
6 Order in this District is proper under 28 U.S.C. § 1408.

7 3. The predicates for the relief sought in the Motion for Supplemental
8 Order are set forth in the Plan, the Metropolitan Creditor's Trust, the Summit
9 Creditor's Trust, and the Order Confirming The Third Amended Joint
10 Reorganization Plan Of Metropolitan Mortgage & Securities Co., Inc. And Summit
11 Securities, Inc.

12 4. As evidenced by the Certificates of Service filed with this Court:
13
14 (i) due, proper, timely, adequate, and sufficient notice of the Motion for
15 Supplemental Order, the proposed Supplemental Order, and all transactions
16 contemplated thereby has been provided as set forth by the Standing Order, and
17 as required by the Agreement, including the appropriate lottery commission of
18 each state affected by the proposed Supplemental Order; (ii) such notice was
19 good, sufficient, and appropriate under the circumstances; and (iii) no other or
20 further notice of the Motion for Supplemental Order, the proposed Supplemental
21 Order, or the transactions contemplated thereby is or shall be required.
22
23
24
25

1 5. A reasonable opportunity to object and be heard with respect to the
2 Supplemental Order and the relief requested therein has been afforded to all
3 persons and entities set forth by the Standing Order, and as required by the
4 Agreement, including the appropriate lottery commission of each state affected by
5 the proposed Supplemental Order.
6

7 6. The Supplemental Order shall constitute a valid and appropriate
8 judicial order under C.R.S.A. §24-35-212 approving the transfer of the Victor
9 Mackey Receivable from WULA to the Debtors' predecessor(s) in interest, the
10 Debtors, and/or Summit.
11

12 7. The Supplemental Order shall constitute a valid and appropriate
13 judicial order under RCWA 67.70.100(1) approving the transfer of the James Lee
14 Snyder Receivable from WULA to the Debtors' predecessor(s) in interest, the
15 Debtors, and/or Summit.
16

17 8. The Supplemental Order authorizing the transfer of the Pamela
18 Seagrave Receivable and the William Provost Receivable shall constitute a valid
19 and appropriate judicial order under M.G.L.A. 10 §28(2).
20

21 9. The Supplemental Order shall constitute a valid and appropriate
22 judicial order under V.T.C.A., Government Code §466.406 in regard to the
23 transfer of the Michael Fluellen Receivable from WULA to the Debtors'
24 predecessor(s) in interest, the Debtors, and/or Summit.
25

1 10. The Supplemental Order shall constitute a valid and appropriate
2 judicial order under V.T.C.A., Government Code §466.406 in regard to the
3 transfer of the Ronald Swinderman Receivable from WULA to the Debtors'
4 predecessor(s) in interest, the Debtors, and/or Summit.
5

6 11. The Supplemental Order shall constitute a valid and appropriate
7 judicial order under F.S.A. §24.1153 in regard to the transfer of the Robert Lukas
8 Receivable from WULA to the Debtors' predecessor(s) in interest, the Debtors,
9 and/or Summit.
10

11 12. The Supplemental Order shall constitute a valid and appropriate
12 judicial order under V.T.C.A., Government Code §466.406 in regard to the
13 transfer of the Claudia Rae Hayes Receivable from WULA to the Debtors'
14 predecessor(s) in interest, the Debtors, and/or Summit.
15

16 13. The Supplemental Order shall be binding on each lottery
17 commission, trustee or Annuity Issuer that received notice of the Motion for
18 Supplemental Order, and all parties affected by the proposed Supplemental
19 Order, any and all successors of (a) the Payees, (b) other interested parties, (c) the
20 Purchaser, and (d) the Assignee.
21

22 14. Notwithstanding the provisions of Bankruptcy Rules 6004(g) and
23 6006(d), the Supplemental Order shall not be stayed for ten (10) days after entry
24 thereof, but shall be effective and enforceable immediately upon issuance thereof.
25 Time is of the essence in closing the transactions referenced herein and the

Debtors and the Purchaser intend to close such transactions as soon as practicable. Any party objecting to entry of the Supplemental Order must exercise due diligence in filing an appeal and pursuing a stay, or risk its appeal being foreclosed as moot.

15. The Supplemental Order shall be entered in the form attached to the Motion for Supplemental Order as Exhibit B.

Presented by:


DAVIDSON ♦ MEDEIROS

/s/ Barry W. Davidson
Barry W. Davidson, WSBA No. 07908
Attorney for Metropolitan Mortgage
& Securities Co., Inc. and the
Metropolitan Creditors' Trust

ELSAESSER, JARZABEK,
ANDERSON, MARKS, ELLIOTT
& McHUGH, CHARTERED

/s/ Ford Elsaesser
Ford Elsaesser, ISBA No. 02205
Attorney for Summit Securities, Inc.
and the Summit Creditors' Trust




Patricia C. Williams
Bankruptcy Judge

11/15/2006 02:46:13 PM